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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1375 – 1376 / 2006 –SM[BR] Date 20/08/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE Appellant

Vs

M/S HIM TEKNOFORGE LTD, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1024 – 1025 / 2009 –SM[BR] dated 22.7.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S HIM TEKNOFORGE LTD,
2. SHRI SHAKTI CHANDRA BIMAL
PLOT NO-264-268A,SECTOR,PITHAMPUR(MP)

2. Adv. / Consult SHRI R.K.HASIJA ADV.
445-446, VIKRAM TOWER, 3RD, FLOOR
SAPNA SANGEETA ROAD INDORE

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.1375-76 of 2006-SM (BR)
E/CO/110-111/2006-SM (BR)

[Arising out of Order-in-Appeal No.IND-I/491-492/2005 dated 30.11.2005 passed by the Commissioner of Central Excise (Appeal-I), Indore (M.P.)]

Date of Hearing/ Decision: 22.07.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No.
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes.

CCE, Indore ...Appellants
(Rep. by Shri R.K. Saini, SDR)

Vs.

(1)M/s. Him Technoforge Ltd.
(2)Shri Shakti Chandra Bimal ....Respondents
(Rep. by Shri R.K. Hasija, Advocate)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No.1024 - 1025/2009 SM (Br)/Dated:22.07.2009

Per P.K. Das:

Revenue filed these appeals against the order of the Commissioner (Appeals), whereby adjudication orders were set aside.

2. Ld. SDR on behalf of the Revenue reiterates the Grounds of Appeal. He submits that the respondents are manufacturer of rough forgings classifiable under sub-heading no.7326.19 of the Schedule to the Central Excise Tariff Act. He submits that the respondents cleared 3737 nos. of rough forgings without payment of duty in the guise of Rule 173 H of the erstwhile Central Excise Rules, 1944. He submits that the Original Authority rightly confirmed the demand of duty of Rs.1,33,439/- and imposed penalty of equal amount on the respondent no.1 and penalty of Rs.10,000/- on respondent no.2, Shri Shakti Chandra Bimal, Authorised Signatory.

3. The main contention of the ld. DR is that Heat numbers as mentioned in the invoices issued at the time of clearance of the goods were not tallied with the invoices for subsequent clearance under Rule 173H of the Rules. It is his contention that at the time of subsequent clearance, the respondents mentioned fresh Heat Nos., which indicated that the respondents cleared the fresh forgings and not the repaired/re-processed materials under Rule 173H of the Rules. In this connection, he drew the attention of the Bench to the statement of Shri Shakti Chandra Bimal, Authorised Signatory .

4. Ld. Advocate reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) examined the invoices in respect of clearance of 3737 nos. of forgings, wherein no Heat

Nos. were mentioned. He further submits that this fact was not disputed by the Revenue in their appeal.

5. After hearing both the sides and on perusal of the records, for the purpose of proper appreciation, the relevant portion of the findings of the Commissioner (Appeals) is reproduced below:-

> " From a careful analysis of the material availed on record, I am of the view that the department has proceeded to demand duty merely on the ground that the heat numbers relating to the initial invoices and the heat number relating to the subsequent invoices are not matching. However, there is no material available on record to substantiate the claim of the department that the appellant had indeed cleared fresh forgings in the guise of repaired goods. On the other hand, the appellants have explained that the process of repairing or re-conditioning of the defective forgings and also the reason for giving a different heat number in order to make the buyer accept the forgings and these explanations are quite reasonable in the facts and circumstances of the case. Further, the appellants themselves have admitted that they had received more than 12,000 numbers of forging out of which nearly 8000 pieces have been sent back without payment of duty and the remaining have been classified as rejects and accounted as scrap in their book of accounts. Even out of the 7,886 numbers cleared without payment of duty under Rule 173H, the department has questioned only the clearances relating to 3737

> numbers on the basis of the allegations narrated above. In view of this position, I am satisfied that the department has failed to show that the appellant had indeed supplied fresh forgings in the guise of repaired goods so as to evade the payment of excise duty. Accordingly, the demand confirmed against appellant no.1 vide the impugned order is set aside. Consequently, the penalty imposed on the appellant no.1 is also set aside."

6. The main contention of the ld. DR that fresh materials have been used in the manufacture of 3737 nos. of forgings is mainly based on the fact that the Heat No. shown in the initial invoice is not tallied with the Heat Nos. shown in the subsequent invoices. I find that the respondents took a stand before the Commissioner (Appeals) that no Heat Nos. was mentioned in the invoices and this fact was accepted by the Commissioner (Appeals) on the basis of the copies of the documents available on record. On perusal of the Grounds of Appeal, I find that the Revenue has not disputed the verification of the documents by the Commissioner (Appeals). As such, there is no material available that the respondents cleared the fresh forgings under Rule 173H of the Rules. In any event, there is no dispute that the respondents received the duty paid rejected forgings at their factory. Therefore, the clearance of the duty paid rejected goods under Rule 173H of the Rules cannot be denied without any basis.

7. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, both the appeals filed by the appellants are rejected. Both the cross objections are disposed of.

Order dictated & pronounced in open court on 22.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.